IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY FIFTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE DR JUSTICE G.YETHIRAJULU

WRIT PETITION NO : 14566 of 2004

Between:

P.Prasada Rao S/o. Solmon Raju, M.B.B.S
R/o.PRTU Colony, Kodada Nalgonda, District.

... PETITIONER

AND

1 Medical Council of India Alwan-E-Galib Marg, Kota Road
Opp.Mata Sundari (Women's) College New Delhi 110002,

rep. by its Secretary.
2 A.P. Medical Council Sultan Bazar, Hyderabad-500 001,

rep. by its Registrar.
3 Principal Kakatiya Medical Collecte
Warangal, Warangal District.
4 Superintendant M.G,.M.Hospital
Warangal, Warangal District.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ order or direction more particularly one in the nature of writ of mandamus declaring the action of the respondents 1 and 2 in not enrolling the name of the petitioner in the State Medical Register of A.P. u/s 15 of IMC Act 1956 and in the Indian Medical Register Maintained under Sec.21 of the IMC Act 1956 as arbitrary, illegal, unjust and irrational and consequently direct the respondents 1 and 2 to enroll the petitioner in the State Medical Register of A.P U/s 15 of IMC Act 1956 by granting permanent Registration and for Registration U/s 23 and for enrolling in the Indian Medical Register maintained under Sec.21 of the IMC Act 1956 on the strength of the Certificate of internship issued by 3rd respondent in Admn. No.4136/1991-92 dated 20-8-2003 and without insisting on repeating internship training as conveyed in letter No.MCI 201 (32)/2003/Regn/8508, dt.16.10.2003 of 1st

respondent and pass such other order or orders.

Counsel for the Petitioner:MR.C.S.K.V.RAMANAMURTHY

Counsel for the Respondent No.1: S. Niranjan Reddy

Counsel for Respondent No.2: Mr.M.Chandrasekhar Rao

Counsel for Respondent Nos.3 and 4: None.

The Court at the admission stage made the following:

Order:

1. The petitioner did his M.B.B.S. Course in Kakatiya Medical College, Warangal, affiliated to N.T.R. University of Health Sciences, Vijayawada, Andhra Pradesh and passed the same in November 2001. From 1-12-2001 to 30-11-2002 he underwent Apprenticeship (one year course) from the same college. Immediately after apprenticeship he applied to the A.P. Medical Council to enter his name in the Indian Medical Council Register being maintained by the Medical Council of India, New Delhi, i.e., the first respondent herein. The first respondent through its letter dated 27-7-2003 permitted the State Medical Council to grant provisional registration to the petitioner indicating that the delay in applying for the provisional certificate under Section 25 (2) of the Indian Medical Council Act, 1956 has been condoned and that the petitioner will be eligible prospectively to start one year apprenticeship. Thereupon the second respondent issued a provisional registration certificate on 2-8-2003. Subsequently, the petitioner submitted a representation to the first respondent through the second respondent mentioning that he has already completed the apprenticeship and requested to enter his name in the register. The second respondent favourably recommended the case of the petitioner through its letter dated 6-9-2003, but the first respondent rejected the request through its proceedings dated 16-10-2003. The petitioner contends that being ignorant of the procedure to be followed for apprenticeship he applied for apprenticeship to Kakatiya Medical College without obtaining the provisional registration certificate and he was

permitted by respondents 3 and 4 to undergo the apprenticeship without insisting on the provisional medical registration certificate. He further contends that the second respondent issued a Circular on 4-4-2003 addressing the Principals of approved teaching institutions to strictly adhere to the provisions of Section 35 (2) of the Indian Medical Council Act, 1956 and see that the candidates provisionally register their names before undergoing the apprenticeship. The petitioner further contends that since the apprenticeship underwent by him was prior to the issuance of the Circular, it causes any amount of hardship if he is once again asked to undergo apprenticeship for a period of one year. He therefore approached this Court through this writ petition seeking to declare that the order of the second respondent dated 16-10-2003 is illegal, arbitrary and irrational and to direct the respondents 1 and 2 to enroll the petitioner in the State Medical Register of A.P. under Section 15 of the Indian Medical Council Act, 1956 by granting permanent Registration and for Registration under Section 23 and for enrolling in the Indian Medical Register maintained under Section 21 of the Indian Medical Council Act, 1956 on the strength of internship issued by 3rd respondent without insisting to repeat the internship.

2. The first respondent filed a counter-affidavit with the following contentions in brief:

3. The Medical Council of India is an expert body constituted under the provisions of the Indian Medical Council Act, 1956 regulating and maintaining the standards with regard to the education, conduct etc., of medical professionals. The provisions of the Act are mandatory. Section 15 (2) prohibits a person other than the one enrolled on the State Medical Register to practice medicine. Section 25 (2) specifies that a person passing a qualifying examination of a recognized university is entitled to register his name provisionally in the State Medical Register to enable him to engage in the Resident Medical Capacity in any approved institution. The persons who provisionally register their names in the State Medical Register will be permitted to do apprenticeship. An apprenticeship cannot

precede the provisional registration and any apprenticeship without provisional registration is no apprenticeship in the eye of law. The ignorance of the petitioner about the provisional registration before undergoing apprenticeship is no excuse. Section 25 (2) does not admit of any interpretation which could give a retrospective registration in respect of a course already undergone. The petitioner is not entitled for any equitable relief. There is inordinate delay in filing the writ petition. Hence the writ petition is liable to be dismissed.

4. The second respondent filed a counter affidavit listing out the happenings and confirming the contention of the petitioner that he has undergone apprenticeship for a period of one year and respondents 3 and 4 ought not have issued posting to the petitioner as an intern, but the mistake has been realized only subsequently.

5. There are no adverse remarks made by the second respondent regarding the request of the petitioner for entering his name in the Register maintained by the first respondent leading to permanent registration of the petitioner as a medical practitioner.

6. In the light of the contentions raised by both parties, the point for consideration is

Whether the petitioner is entitled for the relief as prayed for?

Point:

7. It is an undisputed fact that the petitioner passed M.B.B.S. course in November 2001. The petitioner has undergone apprenticeship for a period of one year i.e., from 1-12-2001 to 30-11-2002. He made an application with the State Medical Council immediately after completion of the apprenticeship. The second respondent addressed the first respondent

and the first respondent permitted the State Medical Council to grant provisional registration by condoning the delay in applying for it. But, the first respondent mentioned in the order that the petitioner is eligible prospectively to undergo internship for one year. The petitioner was granted provisional medical registration certificate on 2-8-2003 but the petitioner being aggrieved by the order of the first respondent directing him to undergo apprenticeship for a period of one year once again submitted a representation to the first respondent that he has already completed the internship. The second respondent favourably responded to his request and addressed the first respondent on 6-9-2003 to recognize the apprenticeship already undergone by the petitioner and to enter his name in the Register maintained by the first respondent by granting permanent registration. But the first respondent rejected the request through the order dated 16-10-2003 on the ground that the petitioner failed to make an application for provisional registration and as the provisional registration is mandatory before undergoing internship, the internship underwent by the petitioner cannot be recognized. The petitioner is contending that immediately after obtaining a provisional certificate of M.B.B.S Degree from N.T.R. University of Health Sciences he approached the respondents 3 and 4 and they permitted him to undergo the internship. Accordingly, he underwent the said course for a period of one year. Had the respondents 3 and 4 insisted on provisional registration, he would have obtained the same, therefore, the first respondent cannot find fault with him. But, the first respondent is contending that unless the petitioner makes provisional registration, he is not entitled to undergo the internship, therefore, he is not entitled to have permanent registration. Section 15 of the Medical Council of India Act provides for the right of the persons possessing relevant qualifications for enrolment in the State Medical Register. Section 15 reads as follows:

15.Right of persons possessing qualifications in the Schedule to be enrolled:

1. Subject to the other provisions contained in this Act, the medical qualifications included in the Schedule shall be sufficient qualification for enrolment on any State Medical Register.

2. Save as provided in Section 25, no person other than a medical practitioner enrolled on a State Medical Register:

a. shall hold office as physician or surgeon or any other office (by whatever designation called) in Government or in any institution maintained by a local or other authority;

b. shall practice medicine in any State;

c. shall be entitled to sign or authenticate a medical or fitness certificate or any other certificate required by any law to be signed or authenticated by a duly qualified medical practitioner;

d. shall be entitled to give evidence at any inquest or in any court of law as an expert under Section 45 of the Indian Evidence Act, 1872 (1 of 1872) on any matter relating to medicine.

3. Any person who acts in contravention of any provision of sub-section (2) shall be punished with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

8. Under Section 21 of the Act, the first respondent is maintaining the Indian Medical Register to enter the names of all the persons who are enrolled on any State Medical Register and who are possessing the recognized medical qualifications. Section 21 reads as follows:

21. The Indian Medical Register:

4. The Council shall cause to be maintained in the prescribed manner a register of medical practitioners to be known as the Indian Medical Register, which shall contain the names of all persons who are for the time being enrolled on any State Medical Register and who possess any of the recognized medical qualifications.

5. It shall be the duty of the Registrar of the Council to keep the Indian Medical Register in accordance with the provisions of this Act and of any orders made by the Council, and from time to time to revise the register and publish it in the Gazette of India and in such other manner as may be prescribed.

6. Such register shall be deemed to be a public document within the meaning of the Indian Evidence Act, 1872 (1 of 1872) and may be proved by a copy published in the Gazette of India.

9. Section 25 deals with the provisional registration of the candidates possessing medical qualification granted by a recognized medical institution. Sub-section 2 of the said Section is relevant for the purpose of deciding this case, and the same reads as follows:

> **25.Provisional Registration:**
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> 7. A citizen of India possessing a medical qualification granted by a medical institution outside India included in Part-II of the Third Schedule, who is required to undergo practical training as prescribed under Sub-section (3) of Section 13, shall, on production of proper evidence that he has been selected for such practical training in an approved institution, be entitled to be registered provisionally in a State Medical Register and shall be entitled to practice medicine in the approved institution for the purposes of training and for no other purpose.
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> 8. A person who has passed the qualifying examination of any University or medical institution in India for the grant of a recognized medical qualification shall be entitled to be registered provisionally in a State Medical Register for the purpose of enabling him to be engaged in employment in a resident medical capacity in any approved institution, or in the Medical Service of the Armed Forces of the Union, and for no other purpose, on production of proper evidence that he has been selected for such employment.
>
> 9. xxx
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> 10. A person registered provisionally as aforesaid who has completed practical training referred to in sub-section (1) or who has been engaged for the prescribed period in employment in a resident medical capacity in any approved institution or in the Medical service of the Armed Forces of the Union, as the case may be, shall be entitled to registration in the State Medical Register under Section 15.

10. The learned counsel for the first respondent relied on two judgments of the Supreme Court to impress upon this Court that the provisions of the Medical Council Act, 1956 are mandatory. In **Medical Council of India v. State of Karnataka** the Supreme Court while dealing with the admissions into the Medical Colleges in Karnataka State observed as follows:

> In the colleges in the State of Karnataka, the Medical Council prescribed the number of admissions that these colleges could take annually on the basis of these

regulations. Without permission of the Medical Council, the number of admissions could not be more than that prescribed at the time of granting recognition to the college. However, in violation of the provisions of the Medical Council Act, the Universities and the State Government have been allowing increase in admission intake in the medical colleges in the State in total disregard of the regulations and rather, in violation thereof. … The Medical Colleges shall restrict the number of admissions fixed by the Medical Council. … the Medical Council has framed regulations with the previous approval of the Central Government which were published in the Gazette of India. Any medical college or institution which wishes to increase the admission capacity in MBBS/higher courses has to apply to the Central Government for permission along with the permission of the State Government and that of the University with which it is affiliated and in conformity with the regulations framed by the Medical Council.

11. The Supreme Court further held that the regulations framed with previous sanction of the Central Government have statutory force and if they fall within the purposes referred to under Section 33, they will have mandatory force.

12. In **Medical Council of India v. Sarang** the Supreme Court while dealing with Regulation 6 (5) of the Medical Council of India Regulations on Graduate Medical Education, 1997 held as follows:

The object of the said Regulation appears to be that although the course of study leading to the IInd professional examination is common to all medical colleges, the sequence of coverage of subjects varies from college to college. Therefore, the requirement of 18 months of study in the college from which the student wants to appear in the examination is appropriately insisted upon. Migration is not normally allowed and has got to be given in exceptional circumstances. In the absence of such a stipulation as contained in Regulation 6 (5), it is clear that the migrated student is likely to miss instruction and study in some of the subjects, which will ultimately affect his academic attainments. Therefore, the strained meaning given by the High Court, which actually changes the language of Regulation 6 (5), is not permissible.

13. The Supreme Court further held as follows:

In academic matters, Courts should not normally interfere or interpret the rules and such matters should be left to the experts in the field.

14. The learned counsel for the first respondent by relying on the above judgments submitted that since the apprenticeship is an academic course, this Court by invoking Article 226 of the Constitution should not interfere with such matters and leave the matter to the experts in the field.

15. The circumstances under which the Supreme Court made the above observations are different from the circumstances of the case on hand. There is no doubt that the Courts shall not interfere with the academic matters where there is any scope for compromise regarding the subjects that are going to be covered or in maintaining a particular standard while imparting such courses. In the case on hand, there is no direction to compromise with the standards of academic curriculum or imparting any relevant courses. The only direction this Court seeks to give is to treat the case of the petitioner as a special case of undergoing apprenticeship without provisional registration. It would in no way affect the academic attainments of the petitioner.

16. The petitioner has undergone the same training, which a candidate undergoes after provisional registration. It cannot be said that he did not undergo the required training. If a candidate registers his name provisionally, he is entitled to practice medicine in the approved institution for the purpose of such training and for no other purpose. The provisional registration is a kind of immunity provided to a trainee from any civil or criminal liability in the event of any risk to any patient on account of treatment or operation undertaken by the trainee. During the training of the petitioner no such contingency arose and he successfully underwent the training. Except the provisional registration before the apprenticeship, the petitioner fulfilled all other requirements for the entry of his name in the Indian Medical Council Register. The respondents 3 and 4 conceded that the mistake of not insisting on provisional registration certificate crept at their instance. Insisting the petitioner to undergo apprenticeship once again is nothing but standing on technicalities and making the petitioner to repeat the course for no purpose after his successful completion of the course. The petitioner did not play any fraud and he did not avoid

provisional registration intentionally. In the light of the circumstances explained by the petitioner and respondents 3 and 4, this can be treated as a special case and the first respondent can permit the petitioner to get his name entered in the relevant register, otherwise the refusal amounts to an action of arbitrariness unmindful of the realities.

17. In the result, the writ petition is allowed. The first respondent is directed to enter the name of the petitioner in the Indian Medical Register after the petitioner fulfilling all other formalities by treating it as a special case in the light of the above recorded observations.

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(Dr.G. Yethirajulu, J)

25th November 2004

svs

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Secretary, Medical Council of India Alwan-E-Galib Marg, Kota Road, Opp.Mata Sundari (Women's) College, New Delhi 110002.
2 The Registrar, A.P. Medical Council, Sultan Bazar, Hyderabad-500 001
3 The Principal, Kakatiya Medical College, Warangal, Warangal District.
4 The Superintendant, M.G,.M.Hospital, Warangal, Warangal District.

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